

Gregory G. Barnett  
Christopher M. Schierloh  
**CASEY & BARNETT, LLC**  
65 West 36<sup>th</sup> Street, 9<sup>th</sup> Floor  
New York, New York 10018  
(212) 286-0225  
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CHIQUITA BRANDS INTERNATIONAL S.A.R.L.  
*f/n/a CHIQUITA INTERNATIONAL LIMITED,*

Plaintiff,

- against -

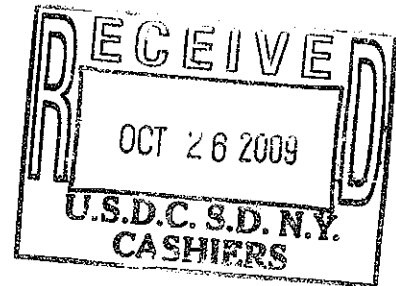
M/V CHIQUITA DEUTSCHLAND, her engines,  
boilers, tackle, furniture, apparel, etc., *in rem*;  
SEVEN HILLS; CHARTWORLD SHIPPING  
CORP.; DEUTSCHLAND SHIPPING CORP.  
*in personam,*

Defendants.  
-----X

JUDGE KOELTL

09 CV 9010

COMPLAINT



Plaintiff, CHIQUITA BRANDS INTERNATIONAL S.A.R.L. *f/n/a CHIQUITA INTERNATIONAL LIMITED* (hereinafter "CIL"), by and through its attorneys, CASEY & BARNETT, LLC, as and for its Complaint in a cause of action both civil and maritime, respectfully allege upon information and belief:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. Jurisdiction is predicated upon 28 U.S.C. §1333 and the General Maritime Law of the United States.

2. At all material times, CHIQUITA BRANDS INTERNATIONAL S.A.R.L. *f/n/a CHIQUITA INTERNATIONAL LIMITED* was and is a corporation organized and existing by virtue of the laws of a state or country other than New York with an office and place of business at A1 Business Center, Batiment B4 Zone artisanale la Piece, Rte de l'Etraz 1180 Rolle, Switzerland. CIL was and is engaged, *inter alia*, in the importation, distribution and sale of fresh fruit, including bananas, into Europe and the Mediterranean and was the owner and or successor in title to a cargo of bananas loaded onboard the M/V CHIQUITA DEUTSCHLAND in October 2007.

3. At all material times, the M/V CHIQUITA DEUTSCHLAND (hereinafter "vessel") was and is an oceangoing refrigerated cargo vessel built in 1991, that is flagged in The Bahamas, has the call sign C6KD8, which engages in the common carriage of merchandise by water for hire between various foreign and domestic ports and which is now, or will be during the pendency of this action, within the jurisdiction of this Honorable Court.

4. Upon information and belief, at all material times, defendant SEVEN HILLS (hereinafter "Seven Hills") is a foreign company with an office address c/o Eastwind Investment Company, 444 Madison Avenue, Suite 200, New York, New York 10022 and owns, operates, manages and/or charters ships, including the M/V CHIQUITA DEUTSCHLAND, that operate between various foreign and domestic ports and, in particular, within this district and was the owner, owner *pro hac vice*, charterer, manager and/or operator of the M/V CHIQUITA DEUTSCHLAND, and at all relevant times, was and still is doing business within the jurisdiction of this Honorable Court.

5. Upon information and belief, at all material times, defendant, CHARTWORLD SHIPPING CORP. (hereinafter "Chartworld") is a foreign company with an office address of 2 Poseidonos Avenue & Zisimopoulou Street Glyfada, Athens, 166 74, Greece, and owns, operates, manages and/or charters ships, including the M/V CHIQUITA DEUTSCHLAND, that operate between various foreign and domestic ports and, in particular, within this district and was the owner, owner *pro hac vice*, charterer, manager and/or operator of the M/V CHIQUITA DEUTSCHLAND, and at all relevant times, was and is still doing business within the jurisdiction of this Honorable Court.

6. Upon information and belief, at all material times, defendant, DEUTSCHLAND SHIPPING CORP. (hereinafter "Deutschland") is a foreign company with an office address of Trust Company Complex Ajeltake Road Ajeltake Island, Majuro, Marshall Islands, and owns, operates, manages and/or charters ships, including the M/V CHIQUITA DEUTSCHLAND, that operate between various foreign and domestic ports and, in particular, within this district and was the owner, owner *pro hac vice*, charterer, manager and/or operator of the M/V CHIQUITA DEUTSCHLAND, and at all relevant times, was and is still doing business within the jurisdiction of this Honorable Court.

7. This action is brought on behalf of and for the interest of all parties who may be or may become interested in the claims herein referred to, as their respective interests may ultimately appear, and plaintiffs are entitled to maintain this action.

#### **RELEVANT FACTS**

8. On or about October 10, 2007, CIL and/or their representatives delivered to the defendants and the M/V CHIQUITA DEUTSCHLAND, a cargo of bananas, consisting of, *inter alia*, 267,159 boxes of Fresh Green Bananas from Colombia, Panama, and Costa Rica,

owned by and/or consigned to CIL, in good order and condition, for carriage aboard the M/V CHIQUITA DEUTSCHLAND, to ports in the European Community, all in consideration of an agreed freight and in accordance with the terms of one or more bills of lading, including but not limited to bill of lading numbers BFC-102, COOS-89, COBAL-57 dated October 11, 2007 and bill of lading numbers BFC-22 and COBAL-19 dated October 12, 2007, all of which were then and there signed and delivered to the shipper of the cargo by the duly authorized agent, representative and/or employee of the defendants and the M/V CHIQUITA DEUTSCHLAND.

9. Plaintiffs refer to said bills of lading for greater certainty as to the contracts of carriage which they represent and will produce the originals or copies thereof at trial.

10. After loading in Almirante, Panama, the vessel proceeded to Santa Marta, Colombia to load additional fruit.

11. The vessel first discharged in Sherness, England and then proceeded to Antwerp, Belgium for discharge.

12. On or about October 26, 2007, during discharge in Antwerp, it was observed that the cargo was damaged in the form of premature ripening and turning.

13. As a result of defendants' failure to transport the cargo in controlled atmosphere pursuant to the carriage instructions, the cargo was damaged and CIL suffered a loss.

14. The losses sustained by CIL were not the result of any act or omission of plaintiff but, on the contrary, were due solely as the result of the negligence, fault, neglect, breach of contracts of carriage, charter and bailment on the part of defendants.

15. This action is brought on behalf of and for the interest of all parties who may be or may become interested in the claims herein referred to, as their respective interests may ultimately appear, and plaintiffs are entitled to maintain this action.

16. Plaintiff and its predecessors in title have performed all of the conditions precedent on their part to be performed under the terms of the said bills of lading and/or charter party.

17. By reason of the forgoing, plaintiff has sustained losses which will be shown with specificity at trial, no part of which has been paid, although duly demanded, but which are presently estimated at \$60,002.91 plus interest.

18. Plaintiffs have a maritime lien against the M/V CHIQUITA DEUTSCHLAND and *in personam* defendants for the damages referred to herein and will enforce that lien in these proceedings.

19. All and singular the matters alleged herein are true and correct. Plaintiff reserves the right to amend and supplement this complaint, as further facts become available.

**WHEREFORE**, Plaintiff prays:

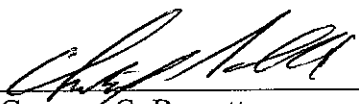
1. That process in due form of law issue against the defendants, citing them to appear and answer under oath all and singular the matters alleged in the Complaint;
2. *In rem* service of process be issued against the M/V CHIQUITA DEUTSCHLAND, her engines, boilers, tackle, furniture, apparel, etc.; that the vessel be seized and that all those claiming an interest in her be cited to appear and answer under oath both all and singular the matters aforesaid;
3. The Court order, adjudge and decree that defendants pay to plaintiffs the losses sustained herein, together with pre-judgment and post judgment interest thereon and their costs; and,

4. That the plaintiff have such other, further and different relief as the Court may deem just and proper.

Dated: New York, New York  
October 26, 2009  
153-40

**CASEY & BARNETT, LLC**  
Attorneys for Plaintiff

By:

  
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Gregory G. Barnett  
Christopher M. Schierloh  
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